



COMMISSION HEARING

TORONTO, ONTARIO – AUGUST 19, 2009

**IN THE MATTER OF THE RACING COMMISSION ACT S.O. 2000, c.20;
AND IN THE MATTER IN THE APPEAL AND REQUEST FOR HEARING OF
STANDARD BRED LICENSEE ROSS SIDDALL**

On May 11, 2009, the Executive Director of the Ontario Racing Commission (“ORC”) issued an Order of Immediate Suspension to ORC licensee, Ross Siddall (“Siddall”). The Executive Director also issued a Notice of Proposed Order to Suspend the Licence of Siddall for 10 years with a \$40,000 fine.

On May 27, 2009, Siddall filed a Notice of Appeal.

On August 19, 2009, a Panel of the Ontario Racing Commission consisting of Chair Rod Seiling, Commissioner Brenda Walker, and Commissioner Bernard F. Brennan, DVM, was convened to hear this matter.

Brian Tropea acted as Siddall’s representative. Jennifer Friedman appeared as counsel for the Administration.

Upon considering the Agreed Statement of Facts, hearing the testimony of Oleh Kupraty, Dr. Bruce Duncan, Desmond Waithe and Siddall, reviewing the exhibits filed, and upon hearing the closing submissions, the Panel ruled, among other things, as follows:

- i) The Panel reduces Mr. Siddall’s fine to \$20,000 but leaves the suspension as assessed by the Director at 10 years.
- ii) The evidence is clear, the only reason a person would administer Aranesp to a horse is to enhance performance.
- iii) To depart from the 10-year penalty for such a serious violation without compelling mitigating factors would send a signal that is not true, there is no abatement by the Commission in its efforts to eradicate the use of illegal, non-therapeutic drugs in horse racing in Ontario. Mr. Siddall’s suspension is appropriate.

The Panel’s Reasons for Decision is attached to this Ruling.

DATED at Toronto this 26th day of August, 2009.

BY ORDER OF THE COMMISSION


John L. Blakney
Executive Director



REASONS FOR DECISION

Overview

1. Standardbred licensee, Ross Siddall, appealed the decision of the Director (Ex.1, tab 5) wherein an Order of Immediate Suspension was issued. The authority for the order is derived from Section 23 of the Racing Commission Act to suspend a licence without serving a Notice of Proposed Order if the Director “considers it to be necessary in the public interest”. Under Subsection 23(2) of the Act, provision is made that when the Order of Immediate Suspension is issued, the Director shall serve the Order, together with the written reasons on the licensee and they take effect immediately upon being served. Those reasons were attached as part of the Order (part B). Siddall was suspended for a period of 10 years and fined \$40,000. Sections 21 and 22 of the Act provides the Director the authority to both propose and suspend a licence respectively provided reasons are provided. Those reasons were attached to the order as Part D.

Background

2. The Panel agreed to allow Brian Tropea to represent the appellant as a friend. No further explanation needs to be offered other than to refer to the precedent ruling by Commission Vice Chair, James Donnelly in the Aimonetti matter, Ruling Number TB 009/2009, paras 7, 8, 9, 10 & 11 as follows:

7. *The HBPA (Thoroughbred) and its Standardbred counterpart, OHHA, have a long history of providing assistance to licensee members on ORC Hearings without fee.*
8. *It is unnecessary to embark upon a dictionary definition, legal dissection and analysis of the term, “friend”. From the context, it must be obvious that the term has its ordinary usage. If one does not know what a friend is then a dictionary won’t help. Provision of this type of assistance by the HBPA without fee is a context which I accept as “friendly” compatible with the adage “a friend in need is a friend indeed”.*
9. *The assistance so provided has been of high quality by reason of HBPA and OHHA experience, expertise and dedication to horse racing. Common sense dictates that the interests of the appellant, the ORC and the public are served by representation to this standard. Protection of the turf of lawyers and para legals does not snuff out those multiple rights.*
10. *Conjuring up circumstances where the appellant’s interest is better served by representation through the HBPA than by representation by a “constituency assistant working in MPP offices,” both presumably acting without fee, is not difficult. Status as a worker in an MPP’s office must, and must be seen to carry no advantage. Regarding relevant expertise, the high probability in tennis terms is, advantage HPBA.*
11. *Accordingly, Mr. Cohen’s qualification as a representative is accepted. With all parties present and ready to proceed and with the issue being an on-going suspension of the horse’s eligibility to race with the days ticking by, common sense militates against adjournment on the technical ground that the declaration was not filed. Furthermore, there being no need to check on Mr. Cohen’s licensing status with the Law Society, nothing of substance is gained and much is lost by an adjournment.*



3. Jennifer Friedman acted as legal counsel for the Administration for the Ontario Racing Commission (ORC).

4. As a result of an Agreed Statement of Facts presented to the Panel, it was agreed that the hearing focus was on penalty. The agreed facts read as follows:

- *Ross Siddall is currently licensed (#518613) with the Ontario Racing Commission as a Driver/Trainer/Owner.*
- *At all material times, Siddall was co-owner of the horse JOJOs Image.*
- *Glenn T. Johnston is currently licensed (#0693W9) with the ORC as a veterinarian. Johnston is the subject of an Immediate Suspension Order by the ORC. At all material times, Johnston acted as the veterinarian for JOJOs Image.*
- *Further to an ORC investigation in relation to the distribution of Aranesp (darbepoetin alfa) by Johnston, information was unearthed that a prescription for Aranesp written by Johnston was filled at the business premises of Shoppers Drug Mart, located at 6020 Malden Road in Lasalle, Ontario (Lasalle pharmacy).*
- *On December 9, 2008, a Production Order for Financial or Commercial Information was obtained and executed at the Lasalle pharmacy.*
- *On January 7, 2009, Ontario Provincial Police Detective Constable Michele Philips attended the Lasalle pharmacy and seized the following in connection with the Production Order:*
 - i. A script from Johnston to Siddall for the horse, JOJOs Image, dated August 8, 2007, prescribing "darbepoetin alfa (Aranesp) 4 x 20 ug/0.5ml pre-filled syringes with three repeats;*
 - ii. A dispense record for JOJOs Image Siddall for Aranesp 20MGC 4 syringe, quantity authorized: 16, remain: 16;*
 - iii. A dispense record for JOJOs Image Siddall for Aranesp 20MGC 4 syringe, quantity authorized: 16, remain: 12, which prescription was filled on October 9, 2007.*

On January 14, 2009, ORC Investigator Oleh Kupraty conducted an interview with Siddall further to out of competition tests conducted on horses for which Siddall was trainer of record. Siddall was questioned about the use of non-therapeutic drugs and medications. Siddall indicated that he "never" used or purchased Aranesp.

On March 8, 2009, ORC Investigator Desmond Waithe interviewed Siddall at Windsor Raceway. Among other things, Siddall admitted the following:

- a. Johnston was one of his veterinarians;*
- b. He received a prescription for Aranesp from Johnston in 2007;*
- c. He filled the prescription for Aranesp at the Lasalle pharmacy and paid between \$260 and \$280 for four syringes;*
- d. He used all four syringes;*
- e. He did not recall the Notice to the Industry entitled "Severe Penalties for the Acquisition, Possession, or Administration of Aranesp, dated April 19, 2006. At the time of filling the prescription some eighteen months after the Notice to Industry was issued, Siddall was unaware that EPO was illegal.*



On March 23, 2009, a written request for documents in respect to Siddall and JOJOs image was issued to Johnston.

On March 31, 2009, counsel for Johnston furnished the ORC with records in respect to Siddall and JOJOs Image. Among other things, the records confirm that Johnston prescribed Darbepoetin alfa (Aranesp) to Siddall and JOJOs Image.

On May 11, 2009, an Order of Immediate Suspension was issued to Siddall by the Executive Director of the ORC.

On May 11, 2009, a Notice of Proposed Order to Suspend the Licence of Siddall for ten years, with a fine of \$40,000 was issued by the Executive Director of the ORC.

On May 27, 2009, Siddall filed a Notice of Appeal with the ORC on the following grounds: "this suspension is much too extreme and I would hope my past performance would speak for itself".

4. On April 19, 2006, the ORC communicated a Notice to Industry (Ex. 1, tab 3) stating that any licensee who acquired, possessed or administered Aranesp (EPO) would be liable for severe penalties. The initiative was the result of an industry wide response to the negative impacts that the use of this non-therapeutic drug was inflicting on both the integrity of the industry and the health of the horse.

5. Mr. Siddall has only three violations on his record since he was first licensed by the ORC in 1958. He testified that he was unaware of the April 19, 2006, Notice to Industry re Aranesp despite the fact that the regulation had been in effect for some eighteen months. The Notice, at its time of dissemination, as per ORC acknowledged policy, was widely distributed within the industry which included race offices, race paddocks, ORC and Standardbred Canada websites, industry associations and trade publications. He relied on his veterinarian not to prescribe him any illegal medication and claimed that the only warning from him was not to use it when the horse was racing. He testified that he followed those instructions in that regard as he did not use the Aranesp (2 syringes) until December when he quit with the horse and again 4 months later, again, when he quit with the horse. He only used 4 of the possible 16 vials of the drug available to him and only some four to five months after the script was written.

6. It was his claim that he did not read what was on the script (Ex. 1, tab 3) or the wording on the product or bill (Ex. 1, tab 3) supplied by the pharmacy. This was the reason that he answered no to Investigator Kupraty in his January 14, 2009, interview (Ex. 1, tab 1) re had he ever acquired or used Aranesp or EPO. The interview was conducted as part of the out of competition test on his horses that ultimately came out negative for EPO. His responses to Investigator Waithe's same questions on March 18, 2009, (Ex. 1, tab 3) produced an admission to both questions and a realization that he had violated the rules of racing.

7. The appellant testified that the reason he went to Dr. Glenn Johnston was that a blood test report produced by Dr. Joe Johnston indicated JOJOs Image's red blood cell level was low. No supporting documentation was produced in this regard from the veterinarian who did the test, Dr. Joe Johnston. The appellant did produce an undated letter from Dr. Glenn Johnston in support (Ex. 3). Conflicting evidence as to the appellant's awareness about Aranesp/EPO is contained on page 5 of the typed interview of Investigator Waithe's report (Ex. 1, tab 3). There the appellant was being questioned about the drug's use as a performance enhancer, and Dr. Glenn Johnston telling him it was just a blood



builder. On being asked what Dr. Joe Johnston said, he replied that he never told him nothing and wanted to know nothing about it. “Joe Johnston doesn’t play with nothing, you could use it if you want but I know nothing about it. He says it should help blood but whether it does or not it’s up to you and it never did help I ever seen.”

8. Dr. Bruce Duncan, the ORC’s Head Veterinarian, appeared as an expert witness. He confirmed that he initiated the investigation into Dr. Glenn Johnston based on information that he had obtained re the veterinarian prescribing EPO to horse people. With respect to the industry notice, he added that the objective behind it was to protect the health of the horse and because of its ability to affect performance. In this regard, he testified that the only reason to give a horse Aranesp/EPO would be to make it go faster other than a veterinarian treating a sick horse in a clinic setting.

9. SB Rule No. 6.46.01 reads “No person shall possess or use a drug or medication on a horse:

- (c) which may endanger the health and welfare of the horse or endanger the safety of the driver,
- (d) which may adversely affect the integrity of racing, or
- (e) which is listed hereafter:
 - (i) Erythropoietin or any of its synthetic derivatives; or
 - (ii) Any synthetic haemoglobin like substances.

10. Confirmatory evidence was contained in Mr. Waithe’s report dated April 8, 2009 (Ex. 1, tab 3). It references an interview conducted by Detective Campisi with Dr. Dorothy Bienzle, Associate Professor of Clinical Pathology for the Ontario Veterinary College. “Dr. Bienzle advised that Aranesp is an erythropoietin, a hormone that stimulates the production of red blood cells and that there would be no indication to use Aranesp in a horse. A veterinarian would use Aranesp in a horse if it had anemia and it would help in alleviating anemia. Dr. Bienzle advised that anemia is very rare in horses. A horse with anemia would not be able to race. Dr. Bienzle stated that the only reason a veterinarian would prescribe Aranesp to a healthy horse would be to enhance its performance.”

Issue

11. Is the penalty imposed by the Director too severe given Mr. Siddall’s involvement and record in the horse racing industry since 1958?

Decision

12. After carefully listening to the testimony and reviewing the evidence and submissions the Panel reduces Mr. Siddall’s fine to \$20,000 but leaves the suspension as assessed by the Director at 10 years.

Reasons for Decision

13. Mr. Siddall, by his own admission, was in violation of SB Rule 6. 46.01. Compounding matters was his denial to Investigator Kupraty on January 14, 2009, that he had ever acquired or possessed Aranesp/EPO. Given that the word Aranesp is clearly present on both the script and billings, this raises serious issues as they relate to both his reliability and credibility.



14. The evidence is clear, the only reason a person would administer Aranesp to a horse is to enhance performance. There was no valid reason why a person would seek to obtain the drug for a “healthy” horse that was racing other than for nefarious means.

15. It is also not reasonable to accept his claim that he was unaware of the Notice to Industry re Aranesp. Even if he did not actually see the Directive, one can reasonably assume he would have been made aware of the direction given the magnitude of the communication and the high profile it received within the industry. The industry’s internal personal communication network is well known and effective. Notwithstanding the aforementioned, under SB Rule No 1.04, ignorance of the rules will not be accepted as an excuse for their violation.

16. Mr. Siddall’s claim that he relied on Dr. Glenn Johnston not to prescribe any illegal medication does not relieve him of his responsibility to both know and obey the rules of racing. His reliability is tempered by a number of factors. They include his own words to Investigator Kupraty re Aranesp and his recount of Dr. Joe Johnstons’s position on its use plus no supporting documentation re the actual blood counts for the horse.

17. The Panel agrees with Vice Chair, Donnelly in the Moffatt decision, Ruling Number COM SB 005/2008, [2008] O.R.C.D. No. 4 in para 64, “EPO/DPO places the horse at risk and imperils the industry. Performing-enhancing drugs cast an executioner’s shadow across horse and industry. The message, clear, concise, emphatic, irreversible is reasserted. “EPO/DPO is an exit ticket”.”

18 In paragraph 65 of the same ruling, “Parity considerations related to Scott and Gray demand a ten year suspension”. The ORC had issued immediate suspensions and proposed orders to both Todd Gray and Brian Scott for EPO violations along with \$100,000 fines. The fines were reduced to \$40,000 and \$20,000 respectively upon appeal. While both Scott and Gray had their misdeeds discovered via out of competition testing, the deed is no less vile and potentially destructive to the horse or the industry in this case. While the appellant did not raise the ability to pay in his defence, the Panel believes a reduction in the fine to \$20,000 is more in line with his involvement but still maintains the continued deterrent factor.

19. Mr. Siddall’s previous record, in normal circumstances, could lead a Panel to reduce what is a very severe penalty. However, when it comes to the use of illegal, non-therapeutic drugs there cannot be nor should there be any leeway when it comes to penalty. The deed strikes at the very foundation of the industry and must be dealt with accordingly. In Friedman, Ruling Number COM SB 025/2007, [2007] O.R.C.D. No. 24 at para 39, sp 29, reference is made to the ORC’s commitment to purge racing in Ontario of EPO/Aranesp. An integral part of that commitment was an enhanced penalty regimen of 10-year suspensions and \$100,000 fines. The industry fully supported this new penalty scheme for illegal, non-therapeutic drugs given the real threat they posed to both the health of the horse and its economic viability.

20. Continuing on in the Gray ruling, Ruling Number COM SB 023/2007, [2007] O.R.C.D. No. 19 at para 14 it reads “The use of EPO/Aranesp as a non-therapeutic performance enhancer is a gross violation of racing rules constituting a serious threat to public confidence. That misconduct is completely unacceptable. Integrity is at the heart of regulatory priority. General deterrence must be a primary concern”. At para 16 of the same ruling related to the parity of penalties it reads, “In order to explain and support departure from the principle of parity of penalties, certain preconditions must be appreciated:



- The Ontario Racing Commission regulates and governs horse racing. Protection of the public interest falls to the Commission. With that public interest comes the duty to act fairly and responsibly.
- Public confidence in the core product of live racing can only be built and maintained on integrity which requires racing free of performance enhancing drugs.
- The Commission's long standing campaign against such drugs and as importantly, promulgation of that campaign.

21. To depart from the 10-year penalty for such a serious violation without compelling mitigating factors would send a signal that is not true, there is no abatement by the Commission in its efforts to eradicate the use of illegal, non-therapeutic drugs in horse racing in Ontario. Mr. Siddall's suspension is appropriate.

DATED this 26th day of August 2009.

Rod Seiling
Chair